



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 30, 1992

Ms. Jo Wiginton  
Senior Assistant City Attorney  
City of Houston  
Legal Department  
P. O. Box 1562  
Houston, Texas 77251-1562

OR92-416

Dear Ms. Wiginton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16645.

You have received a request from the executive director of the American Civil Liberties Union of Texas ("A.C.L.U.") for information relating to the 1992 Republican National Convention (the "convention") to be held in the City of Houston (the "city") and the city's efforts to accommodate parades, demonstrations, or other "free speech" activities during the convention. Specifically, the requestor seeks

- (1) all parade permit requests for the period of August 15, 1992, through August 22, 1992;
- (2) all grants of permit requests for the period of August 15, 1992, through August 22, 1992;
- (3) all denials of permit requests for the period of August 15, 1992, through August 22, 1992;
- (4) all communication to, from, or about the National Republican Party and/or the National Republican Host Committee to, from, or about the City of Houston to the extent that any such communications are related to parades, demonstrations, or other "free speech" activities; and

- (5) all public memoranda, letters, forms, or documents explaining the parade permit ordinance and/or instructing putative permittees on the proper method of seeking such permits.

You advise us that you do not object to release of some of the requested information. However, you have submitted to us for review some documents which you claim are excepted from required public disclosure by sections 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act.<sup>1</sup>

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4 (copy enclosed). When a requestor publicly states on more than one occasion an intent to sue, that fact alone is not sufficient for purposes of invoking section 3(a)(3). *Id.* at 5.

You advise us that the A.C.L.U. has publicly declared its intention to challenge in court the constitutionality of the city's parade ordinance. However, you have not submitted to us for review any concrete evidence which demonstrates that litigation may ensue from the requestor's public declaration. Accordingly, we conclude that litigation may not be reasonably anticipated. Thus, the information

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<sup>1</sup>The city originally asserted section 3(a)(5), which protects the government's interests in negotiations for the acquisition of property. Because the negotiations at issue here have been concluded, the city has withdrawn its 3(a)(5) claim.

submitted to us for review may not be withheld from required public disclosure under section 3(a)(3) of the Open Records Act.

You also claim that some of the requested information is excepted from required public disclosure by section 3(a)(8), which excepts

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether disclosure of particular records will unduly interfere with law enforcement must be determined on a case-by-case basis. Open Records Decision No. 409 (1984).

We have examined the documents submitted to us for review and have considered your arguments. You state:

One of the documents sought to be protected from disclosure concerns the Houston Police Department's (HPD) operational strategy for demonstration and crowd management and control. It even contains numbers and types of officers who will be involved. To release such information would compromise security and increase the potential danger to the public.

Previous decisions issued by this office have addressed the applicability of the section 3(a)(8) exception to law enforcement records reflecting the distribution of law enforcement personnel. Open Records Decision No. 456 (1987) involved a request for information relating to the identity of businesses that employ off-duty police officers. Release of the information was denied because it indicated the times at which particular businesses were not protected. The law enforcement implications of this situation were clear. Similarly, Open Records Decision No. 413 (1984) involved a request for information relating to security measures at a specific prison at a specific time. Disclosure was denied to maintain necessary order during

the scheduled execution. In each of these cases, the requested information was excepted from required public disclosure because it related to specific locations or specific times. If an individual with criminal intent knows precisely where and when the opportunities for crime are at their most advantageous, then the efforts of law enforcement clearly are undermined.

We have examined the information submitted to us for review. We conclude that release of some of the information relating to police security measures during the convention would, if released, undermine legitimate law enforcement interests. This information has been marked and may be withheld from required public disclosure under section 3(a)(8). The remaining information, however, is of a general nature and, if released, would not likely undermine police security efforts at a specific time and location. Accordingly, the unmarked information may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.


Finally, you claim that some of the requested information is excepted from required public disclosure by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

We have examined the documents submitted to us for review. None of the requested information constitutes advice, opinion, or recommendation. The information is factual and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-416.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/GCK/lmm

Enclosures: Open Records Decision No. 452  
Marked Documents

Ref.: ID# 16645  
ID# 16663  
ID# 16738

cc: Ms. Suzanne Donovan  
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